



February 11, 2005

SENATE BILL No. 18

DIGEST OF SB 18 (Updated February 9, 2005 2:24 pm - DI 106)

Citations Affected: IC 3-8; IC 5-8.

Synopsis: Loss of office by convicted official. Conforms several provisions concerning eligibility for or removal from elected office by: (1) providing a uniform definition of a felony; and (2) specifying that the time for disqualification or removal is when the verdict is announced or the person pleads guilty.

Effective: Upon passage.

Lawson C, Mrvan

January 4, 2005, read first time and referred to Committee on Judiciary.
February 10, 2005, amended, reported favorably — Do Pass.

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SB 18—LS 6019/DI 102+



February 11, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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SENATE BILL No. 18

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 3-8-1-5 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) This section does not
3 apply to a candidate for federal office.
4 (b) As used in this section, felony means a conviction in any
5 jurisdiction for which the convicted person might have been
6 imprisoned for at least one (1) year. However, the term does not
7 include a conviction:
8 (1) for which the person has been pardoned; or
9 (2) that has been:
10 (A) reversed;
11 (B) vacated;
12 (C) set aside; or
13 (D) not entered because the trial court did not accept the
14 person's guilty plea.
15 ~~(b)~~ (c) A person is disqualified from ~~holding~~ **assuming** or being a
16 candidate for an elected office if: ~~the person:~~
17 (1) **the person** gave or offered a bribe, threat, or reward to

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procure the person's election, as provided in Article 2, Section 6 of the Constitution of the State of Indiana;

(2) **the person** does not comply with IC 5-8-3 because of a conviction for a violation of the federal laws listed in that statute;

(3) ~~has~~ **in a:**

(A) **jury trial, a jury publicly announces a verdict against the person for a felony;**

(B) **bench trial, the court publicly announces a verdict against the person for a felony; or**

(C) **guilty plea hearing, the person pleads guilty or nolo contendere to a felony;**

(A) entered a plea of guilty or nolo contendere to; or

(B) been convicted of;

a felony (as defined in IC 35-50-2-1);

(4) **the person** has been removed from the office the candidate seeks under Article 7, Section 11 or Article 7, Section 13 of the Constitution of the State of Indiana;

(5) **the person** is a member of the United States armed forces on active duty and prohibited by the United States Department of Defense from being a candidate; or

(6) **the person** is subject to:

(A) 5 U.S.C. 1502 (the Little Hatch Act); or

(B) 5 U.S.C. 7321-7326 (the Hatch Act);

and would violate either federal statute by becoming or remaining the candidate of a political party for nomination or election to an elected office or a political party office.

(d) The reduction of a felony to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5 does not affect the operation of subsection (c).

SECTION 2. IC 5-8-1-37 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 37. (a) As used in this section:

"Felony" means any crime punishable by imprisonment for more than one (1) year in any correctional facility. **has the meaning set forth in IC 3-8-1-5.**

"Public officer" means any person, elected or appointed, who holds any state, county, township, city, or town office.

(b) Any public officer convicted of a felony during ~~his~~ **the officer's** term of office shall:

(1) be removed from office by operation of law when: ~~he~~ **is sentenced for the felony;**

(A) in a jury trial, a jury publicly announces a verdict against the person for a felony;

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(B) in a bench trial, the court publicly announces a verdict against the person for a felony; or

(C) in a guilty plea hearing, the person pleads guilty or nolo contendere to a felony; and

(2) not receive any salary or remuneration from the time ~~he~~ is sentenced for the felony; the officer is removed from office under subdivision (1).

(c) The reduction of a felony to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5 does not affect the operation of subsection (b).

~~(c)~~ (d) If the conviction is reversed, vacated, or set aside, is:

(1) reversed;

(2) vacated;

(3) set aside;

(4) for a felony other than a felony arising out of an action taken in the officer's official capacity, reduced to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5; or

(5) not entered because the trial court did not accept the guilty plea;

and the officer's term has not expired, the officer shall ~~(1)~~ be reinstated in office and ~~(2)~~ receive any salary or other remuneration which ~~he~~ the officer would have received had ~~he~~ the officer not been removed from office.

~~(d)~~ (e) If the conviction is reversed, vacated, or set aside, and the officer's term has expired, ~~he~~ the officer shall receive any salary or other remuneration which ~~he~~ the officer would have received had ~~he~~ the officer not been removed from office.

~~(e)~~ (f) Every vacancy in a public office caused by the removal of a public officer under this section shall be filled as provided by law. If a convicted public officer is reinstated, the person filling the office during the appeal shall cease to hold the office.

SECTION 3. An emergency is declared for this act.

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SENATE MOTION

Madam President: I move that Senator Mrvan be added as coauthor
of Senate Bill 18.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 18, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 1 through 2 with "[EFFECTIVE UPON PASSAGE]".

Page 1, between lines 3 and 4, begin a new paragraph and insert:

"(b) As used in this section, felony means a conviction in any jurisdiction for which the convicted person might have been imprisoned for at least one (1) year. However, the term does not include a conviction:

(1) for which the person has been pardoned; or

(2) that has been:

(A) reversed;

(B) vacated;

(C) set aside; or

(D) not entered because the trial court did not accept the person's guilty plea."

Page 1, line 4, strike "(b)" and insert "(c)".

Page 1, line 4, strike "holding" and insert "assuming".

Page 1, line 5, after "if" insert ":".

Page 1, line 5, strike "the person:".

Page 1, line 6, after "(1)" insert "**the person**".

Page 1, line 9, after "(2)" insert "**the person**".

Page 1, line 11, strike "has:" and insert "**in a**:"

(A) jury trial, a jury publicly announces a verdict against the person for a felony;

(B) bench trial, the court publicly announces a verdict against the person for a felony; or

(C) guilty plea hearing, the person pleads guilty or nolo contendere to a felony;"

Page 1, strike lines 12 through 13.

Page 1, line 14, strike "a felony (as defined in)".

Page 1, line 14, delete "IC 35-50-2-1(b)), and the".

Page 1, delete line 15.

Page 1, line 16, after "(4)" insert "**the person**".

Page 2, line 2, after "(5)" insert "**the person**".

Page 2, line 5, after "(6)" insert "**the person**".

Page 2, between lines 10 and 11, begin a new paragraph and insert:

"(d) The reduction of a felony to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5 does not affect the operation of

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subsection (c)."

Page 2, line 15, delete "IC 35-50-2-1(b)." and insert "**IC 3-8-1-5.**"

Page 2, line 20, after "when" insert ":".

Page 2, line 21, delete "the court pronounces the sentence for".

Page 2, line 22, delete "the felony;" , begin a new line double block indented and insert:

"(A) in a jury trial, a jury publicly announces a verdict against the person for a felony;

(B) in a bench trial, the court publicly announces a verdict against the person for a felony; or

(C) in a guilty plea hearing, the person pleads guilty or nolo contendere to a felony;"

Page 2, line 24, delete "court pronounces the sentence for" and insert "**officer is removed from office under subdivision (1).**"

Page 2, delete line 25, begin a new paragraph and insert:

"(c) The reduction of a felony to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5 does not affect the operation of subsection (b)."

Page 2, line 26, strike "(c)" and insert "**(d)**".

Page 2, line 26, strike "is reversed, vacated, or set aside," and insert "**is:**

(1) reversed;

(2) vacated;

(3) set aside;

(4) for a felony other than a felony arising out of an action taken in the officer's official capacity, reduced to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5; or

(5) not entered because the trial court did not accept the guilty plea;"

Page 2, line 26, beginning with "and" begin a new line blocked left.

Page 2, line 27, delete ":".

Page 2, line 28, strike "(1)".

Page 2, line 28, delete ";".

Page 2, line 29, strike "(2)".

Page 2, run in lines 27 through 31.

Page 2, line 32, strike "(d)" and insert "**(e)**".

Page 2, line 36, strike "(e)" and insert "**(f)**".

Page 2, after line 39, begin a new paragraph and insert:

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"SECTION 3. **An emergency is declared for this act.**".

and when so amended that said bill do pass.

(Reference is to SB 18 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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